Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

ROSEMARY STRAMEL,

Petitioner,

v.

NELSON B. STONE, M.D.,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The First District

PETITION FOR WRIT OF CERTIORARI

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69 pp

QUESTIONS PRESENTED FOR REVIEW

1. (a) Whether the Constitution of the United States, as protector of citizens' rights and freedoms, ceases to protect a citizen while sedated and unconscious under anesthetic thereby permitting a surgical procedure to be performed upon a citizen in these United States of America where no consent either implicit, explicit or implied was ever given for such procedure, where a surgeon had no consent to take a blade, where a person had no knowledge the surgeon had any intention of taking a blade, and where it has been visibly lifetime damaging when there was no compelling issue of threatened life, sickness or disease, thereby stripping a citizen of a most precious freedom, that of the exclusive right to ownership and choice over self under a Constitution of a free people protected under the IX, XIII, and XIV Amendments of the U.S. Constitution.

(b) Whether the State of Illinois judicial system is in violation under the Amendments of the United States Constitution by the enforcement of Court Rules and Codes that deprive a citizen of the fundamental liberties of the right to sue, to freedom of speech in the Court, the right to due process, the right to petiton for redress, to equal protection of the laws, and the protection of freedom of choice and ownership over self under a Constitution of a free people protected by Amendments I, IX, XIII & XIV, where a surgical procedure was performed without knowledge or consent.

2. (a) Whether the Constitution of the United States ceases to protect a citizen where $9,000 was paid for surgical procedures that were never performed under circumstances in violation of freedom of press under U. S. Constitution, Amendment I.

(b) Whether the state of Illinois judicial system is in violation under the Amendments of the United States Constitution by the enforcement of Court Rules and Codes that deprive a citizen of the fundamental liberties of the right to sue,

the freedom of speech in the Court, the righ to due process, the right to petiton for redress, to equal protection of the laws, and the protection of freedom of choice and ownership over self under a Constitution of a free people protected by Amendments I, IX, & XIV where $9,000 was paid for surgical procedures that were never performed.

PARTIES

ROSEMARY STRAMEL,

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a. The event must be of a kind which ordinarily would not occur in the absence of negligence.
b. The event must be caused by an occurrance in the exclusive control of the defendant.
c. The event was not due to any neglect or voluntary act on the part of the plaintiff.

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Surgeon must give explanation of proposed treatment, the alternatives to the treatment, and the foreseeable risks and results. Failure to comply with these three prerequisites is negligence.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Rosemary Stramel, respectfully prays that a writ of certiorari be issued to review the constitutionality of the judgment of an Illinois Court of Appeals, 1st District, (App.8) that is in conflict with the fundamental rights and protections of a citizen under the United States Constitution.

JURISDICTION

The Illinois Court of Appeals issued its order on June 30, 1995. The Petition for Rehearing was timely filed on July 21, 1995 and denied on July 27, 1995. A Petition was filed with the Illinois Supreme Court August 31, 1995 and denied December 6, 1995. This Court's jurisdiction is invoked under Title 28, U.S.C. S 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendments I, IX, XIII, and XIV (App. 28) and USCS codes. (p. 20-22)

STATEMENT OF THE CASE

This case concerns a complaint where on September 28, 1987, respondent performed surgery upon petitioner, to which the respondent admits in Answer to Complaint at Law (R. 19) and which is supported by the Hospital Operative Report of 9/28/87 declaring respondent as attending physician, (2nd Supp. Record of Exhibits Part II, 23-4), where: 1) respondent cut into and visibly and irreparably damaged petitioner where he had no consent to take his blade, and where the petitioner had no knowledge that he had any intentions of taking his blade, and forced an unauthorized procedure upon petitioner while unconscious under anesthetic thereby violating petitioners right to exclusive ownership and freedom of choice over self under

the United States Constitution which is a primary issue in this case -- and it also concerns, as a separtate and distinct issue: 2) the respondent's taking $9,000 from the petitioner, and never performing the procedures for which the $9,000 was paid by substituting another written procedure in its place that was not only expressly for another purpose, which was a fraudulant taking of the money, but that was done in a manner contrary to disclosures in the written procedure given to petitioner, signed in the respondent's own handwriting, doing irreparable life time damage, the acts of which are a false and deceptive advertising practice to achieve an exhorbitant monetary gain at the expense of the public. (R.3, 131-3, 140-1, 189, 152-157, 2nd Supp.Record of Exhibits Part I & Part II. **[herein R. Ex.]**)

A week later, on 10/5/87, petitioner sought the name of a treating physician in Chicago, Ill. from the Chicago Medical Society, supported by a letter in the record to the Medical Society from the treating physician, and sought his service from 11//87 to 3/88, supported by physician's record of attendance card and charges. (R. Ex. Part I, 81) Consultation confirmed that the procedure paid for was never performed and that damages from what was done were not reversable. Photos were taken of all damages by a professional photo studio in 10/88 in Los Angeles, Calif. where I was assigned to work at the time. They were picked up and paid for 11/9/87, supported by receipt and copies of the actual photos (R. Ex. Part I, p. 17-19). Upon confronting the respondent with the fact he had performed procedures upon me without my knowledge and consent and that the procedures that I had paid for were never performed, he took sanctuary behind silence and would not speak with me. (R. 139-140) I sought the services of a law firm on 4/22/88, supported by retainer, (R. Ex. Part II, 112) who obtained the respondent's records and photos, treating physician's records and photos, and hospital records, which were all copied by Record Copy Service and addressed to the lawfirm, and which are a part of the Court record as they relate to the issues presented in this case. (R. Ex. Part I & Part II)

In 5/88, petitioner was contracted to work in N. Y as a consultant and had consultations there with three New York D[illegible]ors on 5/14/88, 6/22/88, 5/19/89, 11/22/89, and later an Arizona doctor on 5/1/91, confirming that what was paid for was never performed and that respondent's damages of 9/28/87 were not reversable. (R. Ex. Part I, 68-90)

On 9/28/89, a four count lawsuit was filed with the Circuit Court of Cook County (R. 2-4) and a summons was issued and served and the complaint was answered. A motion was made by respondent to dismiss the case because Ill. Code of Civil procedure Rule 2-622 had not been complied with which states that a failure to provide an affidavit from a physician in the same area of practice as the defendant that a reasonable and meritorious cause exists shall be grounds for dismissal under 2-619. The rule is alleged to reduce the number of frivolous suits that are filed and to elimiate such actions at an early age before expenses of the litigation are incurred, however the facts of this case are not frivolous. The motion was denied by Court Order on 1/30/90 which states: "Defendant's motion is denied without predjudice to refiling if the Supreme Court reverses the decision in Le Luna.". (Order, App. 1) This case, De Luna v. St. Elizabeth's Hospital, 147 Ill 2nd 57-84, determined that Section 2-622 of the Code of Civil Procedure was unconstitutional in that it violated the separation of powers clause of the Illinois Constitution which provides: "The legislative, exectuive and judicial branches are separate. No branch shall exercise powers properly belonging to another." (Ill. Const. 1970, art II, s1) It determined that 2-622 granted health care professionals authority to usurp a judiciary's role in applying principles of law to the facts of the case, denying plaintiffs possibility of judicial review, & violated the doctrine of separation of powers, and yet this petitioner's case was dismissed because of this rule in the face of DeLuna and because of Rule 220 - Expert Witness which renders the medical profession the same kind of control over a citizen as does enforcement of 2-622. Code 2-622, 2-619 and 220 are

shown in full in App.17-24 because they are a critical factor in this appeal as they have taken fundamental U.S. Constitutional rights away from this petitioner in this case.

A pretrial session was ordered for 1/11/93 where respondent's attorney and the petitioner were both present in the judge's private chambers, and the defendant's attorney stated that there was no Code 2-622 affidavit filed. The judge asked petitioner to show him evidence of my complaint of surgery where there was no consent, which is visible upon my person, and upon his examination of it, he put the case on the trial call on 1/11/93. (Order App. 2)

On 1/13/93, the defendant again filed a motion to dismiss the case for failure to comply with Code 2-622 set for hearing 1/22/93. It was ordered that 2-622 be complied with by 5/17/93. (R. 53-9, 63) On 5/17/93, petitioner presented a document from Dr. Robert M. Dryden, MD, FACS, of the Arizona Centre Eye and Facial Plastic Surgery Clinic, an over 20 year surgeon, from a leading and long established Tucson clinic,stating on the clinic's official letter head, that there was no evidence that the procedure I have said I paid for was perfomed, and he confirms damages of which I complain and of which I gave no consent. He stated further:

> "It is customary in the medical profession to give adequate informed consent as to what the surgeon plans, what results are anticipated, and what the complications might be. If such an informed consent has not occurred, it would be considered negligent." (R. 74)

On 5/14/93, I appeared before the judge and handed him the document, which he accepted. I did not understand that I was to present a statement also. The transcript of that hearing states: The Court: ..." there are two papers that have to be filed. One is the statement from the doctor"... "The other is a statement from you or your lawyer. So it will be you in your

case since you are without a lawyer. You will see it. You read this and you will see"... "It's a statement, an affidavit you can prepare and sign yourself. It's not for the doctor You have the requirement. You have a statement from the Doctor." (Transcript, R.Vol. II, 5) and so the case was continued to 6/14/93 at 2:00 p.m. On 6/14/93 I appeared a second time as ordered in this matter and placed my statement into the hands of the judge. It states that:

> "I consulted and reviewed the facts of my case with a professional who is knowledgeable in the relevant issues involved and is qualified by practice and competence in the subject of the case."

It was written on a standard Cook County Affidavit form and attached to it was Dr. Dreydon's report, sworn to and signed before a notary public, and a copy of my Complaint at Law. It was accepted by the judge and I was dismissed. (R. 66-77)

On 8/31/93 an order was issued stating that the case was set on trial call on 10/5/93 at 10:30 a.m. in room 2005 which was to be the permanent room for motions and hearing of the complaint for the duration of the case. On that date it was ordered that the trial date be set for April 13, 1994. I stated to the judge that I had intended to proceed Res Ipsa Loquitur without expert witness in this case where surgery had been performed upon me that I did not give my permission for and the trial date was so set on that basis. The transcript states:

> Ms. Stramel: "There is a provision for coming in without an expert your honor" The Court:" Res Ipso Loquitur." ...The Court: "The thing speaks for itself."Ms.Stramel: ...there is absolutely nothing technical about what is wrong with me. And it's all visible. The Court: " Okay. Here is what I will do."... " What I am going to do is set out a schedule"...The Court: "I don't have the nature of

> the injury"... Ms. Stramel: ..." I had surgery performed on me that I never asked for"...The Court:"Plastic surgery. Okay " Ms.Stramel: "I asked for one surgery and got another." The Court:"All right." Ms. Stramel: "Which damaged me."The Court:"I will set it for trial on April 13th"... "Okay. I just want to define. Plaintiff shall have thirty days from today to name an expert if she chooses." Ms. Stramel: ..."Well, I'm going to be using the"- - (I said Res Ipsa Loquitur, but the transcriber cut it off) The court: "Okay: We are going to put this in the order."But the defendant's attorney didn't put it in the order and I trusted in what was said at this hearing. The Court: "I am setting out a discovery schedule where you have to disclose your expert within thirty days of today if you are going to use an expert." Ms. Stramel:"All right."The Court:"The defendant then has thirty days to depose that expert. take the deposition The defendant has thirty day period from then to disclose and you have thirty days to depose his expert. Okay." (Transcript R. 188-192)

I stated also that I intended to present a Motion for Summary Judgment under rule 2-1005 (App. 25) before the trial date, and the judge cautioned this petitioner that the motion had to be filed by the end of February because no motion could be filed within 45 days of the trial date and to present it to his Courtroom 2005. The transcript states:

> The Court: "Okay, Motion for summary judgment -- all motions are brought in Room 2005. We do have a Circuit Court Rule that provides that a motion for summary judgment cannot be brought within fourty-five days of the trial date unless there is good cause shown. So I strongly urge you to get that motion on file well before that forty-five day limit. Okay. In other words, you can file it in February. You can file it in January, but you are running into trouble in March." (R. 191) The

> date for the summary judgment was not put into the order. The Judge said, "I'm not going to give you a date. You can file it any time you want, but be careful of the fourty-five day rule." (Transcript R. 191)

The Order then set the Rule 220 expert disclosure and deposition dates -- plaintiff to "name expert if she chooses." (Transcript R. 190)The Court Order reads: "Plaintiff shall name her expert witness, if any, on or before November 4, 1993 persuant to Rule 220." The defendant was given until 12/6/93 to depose that expert. The defendant was ordered "to identity experts persuant to Rule 220 on or before January 5, 1994. Plaintiff shall depose defendant's expert on or before February 4,1994." (Order R. 84, App. 3)

On 1/25/94, a Notice of Motion was filed and sent to me by certified mail noticing a 2/7/94 hearing date for the Defendant's Motion to Bar Expert Testimony and for Summary Judgment in Courtroom 2208, a courtroom that had no jurisdiction in the case as it was permanently assigned to Courtroom 2005. On 1/31/94, I dispatched a Motion to Deny, also set for hearing on 2/7/94, stating that the case was being directed in Courtroom 2005, that a trial date had been set for 4/13/94 (R. 84, App. 3), and that the Plaintiff's Motion for Summary Judgment was to be heard in that Courtroom and I asked that the case be allowed to proceed as was currently being directed in 2005.

The Defendant's motion was not heard. An order was issued stating that the "defendant's motion is entered and the motion is transferred for hearing to room 2005. Defendant shall notice hearing in room 2005." (R.120) This Petitioner was not able to be present at the 2/7/94 hearing and had called the judge's chambers in advance that her mother was expected to die at any day from terminal cancer and that I could not be present. I was informed at that time that the motion wouldn't be heard as the jurisdiction was in courtroom 2005 and not

2208. Another motion was then issued with a proof of service of 2/8/94, one day later, as a Notice of Emergency Motion, for the hearing of the Defendant's Emergency Motion to Bar Expert Testimony and for Summary Judgment to be heard on 2/22/94 at 9:00 a.m. in Courtroom 2005. This Petitioner took it that this was the replacement for the 2/7/94 motion that was not heard in courtroom 2208.

On 2/14/1994 I faxed a message to the respondent's attorney stating that my mother had just died and that there would be a delay in some papers he was expecting from me and that I would be preoccupied with these affairs for at least a week. On 2/15/94, one day later, respondent's attorney filed Defendant's Reply Memorandum in Support of His Motion to Bar Expert Testimony and for Summary Judgment which was received on 2/16/94 by a family member in my absence . It was accompanied by a letter written to Judge Donald O'Connell in Courtroom 2005 stating:

> "Enclosed are the papers related to the fully briefed Motion to bar Expert Testimony and for Summary Judgment set for hearing before you on 2/18/94 at 2:00 p.m..They are the following: 1. Defendant's Motion and Memorandum in Support; 2. Pro Se Plaintiff's Motion to Deny Defendant's Motion and 3. Defendant's Reply Memorandum." (Letter R. 170)

On 2/17/94 the relative who received the document notified the court by phone that day, and faxed Courtroom 2005 twice on 2/18/95 that I was outside of the area due to my mother's death and could not be present. (Confirmation of both faxes, R. 173) It wasn't clear how this hearing date came about because this petitioner was notified of a 2/22/94 replacement date for the Defendant's Motion for Summary Judgement and not 2/18. I had never at any time received a notice of a 2/18/94 hearing date.

On 2/18/94, behind my back and without me present, when both the respondent's attorney and the Court had been notified of my mother's death and of my circumstances, the respondent was granted summary judgment and my case was dismissed. There was no 2/22/94 hearing of the Emergency Motion. It wasn't until 8/94, after I signed the Court record out to prepare my Appellate Court brief, that I learned and realized that the defendant's attorney had tricked me by actually filing two Motions to Bar Expert Testimony and for Summary Judgment, **both stamped by the Court on 1/25/94 at 12:22 p.m.** One was set for hearing in Courtroom 2208 for 2/7/94, the Courtroom having no jurisdiction, which was sent to me but it was not included anywhere in the Court's record -- it had a certificate of service of 1/26/94. The other one was set for hearing in Courtroom 2005, the room with jurisdiction, that was never sent to me, but it was included in the Court's record (R. 105-109). It had a certificate of service of 1/25/94, but was never sent to me and I never saw it unitl 8/94 when I signed out the Court record to work on my Appellate Court brief. I filed the document sent to me noticing the 2/7/94 hearing date myself on 9/13/94 at 10:41 a.m. as evidence of what had been sent to me. (Supp.R. 2-6)

Under normal circumstances, working out of state, I never would have been able to fly back with the short notice sent to the home of a relative on 2/16/94 advising me that there was a hearing on 2/18/94. The defendant's attorney was very familiar with the fact that I worked out of state and this was the reason that all mail was sent % 1131 Darrow, per Court order, as a designated point to reach me in my absence from the Chicagoland area where this case was taking place. (Order App. 2) It was clear that I was never intended to be there.

On 2/18/94, Judge Jacqueline Cox , dismissed my case, without me present to defend myself because the date had been sprung on me by surprise, and when both the Court and the Defendant's attorney had been appropriately notified by fax that

my mother had just died and I could not be there. (Defendant's fax and confirmation, R.159-160; Court's faxes and confirmation R.169-173) There was no oath taking, there was no understanding of the Plaintiff's issues or the complaint on the part of the Judge, without any question on the part of the Court as to whether the contents of the Defendant's Motion to Bar Expert Testimony and for Summary Judgment were true or not, without any question as to whether the 2/18 testimony of James Stamos, the defendant's attorney, was valid and true or not, without a trial and without my ever having examined and cross-examined the defendant or his expert under oath. It is clear from the 2 ½ page double spaced transcript that the case, after all of the years of waiting for a hearing, was dismissed in just a few minutes without me present. (Transcript R 175-7;Order App. 4)

The transcript shows that James Stamos, defendant's attorney, tells the Court that certain procedures were done incorrectly on my eyes which is not true -- no permission was given and I was never informed that the defendant had any intention of performing the procedure I complain of to the Court. He tells the Court that in the opinion of Dr. Mustoe that there was no negligence or malpractice which in not true -- a procedure perfomed without consent has been ruled to be negligence under the Doctrine of Informed Consent in the State of Illinois and this Doctrine is a major issue in my complaint because it is not enforced in Illinois which gives the public a false sense of protection. He takes issue with my 2-622 code requirement and with my proceeding Res Ipsa Loquitur in the case when Code 2-622 was declared unconstitutional under DeLuna, and after my medical document had been accepted by the Judge on 5/14/93 when it was ordered that I get a medical report, and when Res Ipsa Loquitur had been openly and clearly discussed at the hearing on 10/5/93 and a trial date so set on that bais. The judge asks if the complaint alleges that there was no informed consent. James Stamos says "I don't believe so, Judge." This is not true, the complaint says, " 4.a.Failed to obtain consent from Plaintiff," (R. 3) This information is in my

complaint, in my deposition, in interrogatories, has been the subject of discussion at hearings and is contained in numerous motions. The Judge asks if James Stamos has a copy of the complaint. He replies "I don't think I have it with me. I apologize. I don't have it with me." and with this Judge Cox granted summary judgment to the defendant and the case was dismissed. (Transcript, R.75-7)

In addition to the untruths and infractions described above, the Defendant's Motion for Summary Judgment states that plaintiff's complaint is a single count complaint--untrue--it is a 4 count complaint. (R. 2-5), and, he presents an opinion of a Dr. Mustoe to the Court. I did not know that the defendant had an expert; he had never been disclosed to me. I found out he had an expert from the Motion for Summary Judgment dispatched 1/26/94 attested to by the proof of service on the document which was set for hearing 2/7/94 (Supp. R.2-6) which was in violation of the Court Order to disclose him to me on or before 1/5/94 and thus I was denied my 30 day right to depose the defendant's expert, Dr. Mustoe.

Further, the defendant's expert states in his affidavit that he reviewed the records of my physician's, Dr. Alan Putterman and Dr. H. Bellin . Stamos & Trucco had never notified me that they had subpoenad the records of these two doctor's. I was sent copies of subpoenas to Dr. Mark Erlich and Dr. S. Lauer of Montifiori Medical Center, neither of which are named in the Motion for Summary Judgment, but I was never sent notice that records were subpoenaed from Dr. Putterman and Dr. Bellin.

After this 2/18/94 session there was no hearing of the 2/22/94 Emergency Motion of which I had been originally notified. On 3/18/94, this petitioner came to Courtroom 2005 at 2:30, for the hearing of my Plaintiff's Motion for Summary Judgment, which had been timely filed in February, and I was told that my case had been dismised and that I further had no trial date, it was stricken, and I was invited to leave the

Courtroom. I complained of the "dirty and underhanded means" (R. Vol. II, 11) in which the defendant's order had been obtained and I had a written Motion to Vacate Defendant's Order in hand. I brought to the Court's attention that both the Court and the Defendant's attorney had been notified of my mother's death and I had copies of the faxes and their confirmations and evidence of my mother's death with me and showed it to the judge. After a confrontation, I was given until 4/11/94 to present the Motion to Vacate -- the defendant until 4/27 to respond. The case was here and then taken out of the Courtroom. The transcript of 10/5/94 states that all motions are brought in Courtroom 2005. (R.191) and yet the Judge took the case out of the Courtroom and into her private office , room 401, therefore, there are no transcripts of record of anything that occurred after 3/18/94. (Last transcript is 3/18/94 hearing R. Vol. II 9-18; Order App. 5)

In my Motion to Vacate (R.151 & seq.), I complained of the defendant's attorney's untruths and infractions, that the defendant's order had been given in my absence after appropriate notice was given to the Court and the Defendant's attorney of my mother's death, that my rights under the U.S. & State Constitutions had been violated, and I asked for fair hearing of my Motion for Summary Judgement in all fairness so that both sides would be fully disclosed. I cited the discrimination against me of the Court's failure to uphold the Illinois Doctrine of Informed Consent and cited 8 other Illinois Superior Court cases where the Court ruled that non-informed consent was battery and tort and that these rulings should apply to all citizens of Illinois. (App. 28-29) I cited the lack of disclosure and misrepresentation of the defendant in a business practice, and took issue with Dr. Mustoe's testimony, and the unconstitutionality of the Code 2-622 affidavit and further that it had been accepted by the Court when presented, and that Rule 2-622 and 220 was being placed "above" my rights under the US and Ill. Constitution, that Res Ipsa Loquitur did apply, and how it applied, that everything in my case could be seen

with two eyes and clearly understood by the common man (App. 27), and that the trial date was set on the basis of my proceeding at trial under that Doctrine. I asked the Court to assume my position as the consumer who purchased a service from the defendant in this matter and to review the written hand signed documentation given me by the defendant, which was written for public distribution, along with 13 other publications all written and published for public disemination, given to me by other medical authorities and from the American Society of Plastic and Reconsructive Surgery which is the proof that the surgery I asked and paid for was never performed. I asked the Court to review my before surgery photos and documentation from the defendants file, and the after surgery photos taken by professional studios. I asked that the Court review the material that Dr. Mustoe, the defendant's expert, states in his affidavit that he reviewed in my Blue Binders (R. Ex.) because it contradicts what he said to the Court that the Court just accepted and granted judgment to the defendant upon without ever bothering to look at this material. I asked for equal time in the hearing of my Plaintiff's Motion for Summary Judgment (R.129 & seq) and that the Court review its evidential support of photos from the defendant's file, medical reports, procedures written for public distribution, the receipts, the after surgery photos, and to consider the Ill. Superior Court and Federal Court cases I invoked (App. 28 & 29), etc. And I complained that I had not had an opportunity to examine and cross examine the defendant and his expert. (R. 151 and seq.)

The Judge said she would take my Motion for Summary Judgment "under advisement" and continued the issue to 5/24/94 -- also in her private office. (App. 6) She refused to take the Exhibits of supporting evidence to my Motion for Summary Judgment, Blue Binder and Schedule of Losses, (R. Ex. Part I & II) because the defendant's attorney said that he had never received a copy, which was not true. Therefore on 5/24/94,I presented a Motion to Accept Documents and List of Documents to officially plead with the Court to accept my

evidential matter and review it, and I presented with it a confirmation of the "signed" proof of delivery to the defendant's attorney's office of the black & white xerox copies of the Blue Binder and Schedule of Losses (herein called R. Ex) by Cannon Ball Delivery Service two months prior to the 5/17/94 hearing date. I also stated in writing that I had just given them a second set, at a cost of $48 dollars on 5/20/94.

The Judge said that the Motion to Accept Documents is granted, but she refused to look at them, forbid me to speak of them, and said that it is was the law that a case cannot proceed in medical malpractice without an expert witness in Illinois and she cited the ruling of Piquette v. Midtown Anethesia, 192 Ill. 3d 219. I complained that doctors in the profession do not feel it is their responsibility to stand up against their peers in matters of which they had no involvement and that my fate should not be contingent upon their standing as accusers against a fellow surgeon in the brotherhood, a brotherhood that has no right to ownership or choice over my person under any state law or under either the U.S. or State Constitutions. But the Judge proceeded to dismiss the case and asked the defendant's attorney and I both to leave her office. The session took barely 7 to 10 minutes. (Final Order of 5/24/94, App.7) Piquette has nothing to do with the facts in my case. It concerns a case where a patient's crowned tooth was accidentally broken by a tube put into a patient's mouth during a biopsy procedure to treat vocal cords which caused him the expense of costly repair. The court ruled that a mishap or bad result such as an accidentally broken tooth isn't of itself proof of negligence. My case concerns the fact that battery occurred and that a major amount of money was taken from me for a service never performed and it is in no way similar to Piquette.

The Appelate Court concurred with the lower Court and rejected all of my arguments, which were the same as to the Circuit Court, that came from my Plaintiff' Motion to Vacate, Plaintiff's Motion for Summary Judgment and other documents.

(App. Court Order App.8) The dismissal of the case is based upon issues over Rule 220 - Expert Witness and Rule 2-622 Physician's affidavit and 2-619. The Order says, "On appeal plaintiff claims that informed consent does not require expert testimony.", which is not true, and I was stunned at this comment. What I argued was, that I should not need it in a case where I have given no consent to a procedure and that the Court is putting Rule 220 and 2-622 above the U.S. and Illinois Constitutions by surrendering the public as nothing but mere chattle to the surgeon and to the medical profession to be acted upon by their will to the denial of all rights of the citizenry which they have no right to under any state law or under the U.S. & State Constitutions, and further, that no citizen's rights in this matter should be contingent upon a peer surgeon standing as accuser against his own kind which they refuse to do because to so would destroy the total immunity they have from prosecution by collectively maintaining the pact "conspiracy of silence" which is well known by the both the Court and the public sector. The Appellate Court criticized my 2-622 medical document calling it a letter which was not only accepted by a judge of some 17 years of service in the Circuit Court on 5/17/93 (Transcript R. Vol .II, 5), but that was declared unconstitutional under DeLuna as cited in the Order of 1/30/90. (App. 1)The Appellate Court accepted Dr. Mustoe's commentary in his affidavit that he had reviewed the defendant's medical records, photos, and Ms. Stramel's Blue Binder, and he felt that the defendant did not deviate from the standard of care and treatment of this plaintiff. But the Court disregarded my testimony that I did not pay for, did not consent to, that the defendant had no permission to take a blade to the crease area of my eyes, and that to this day (meaning the date of the Appeal), I did not know why this had been done to me. They further disregarded my testimony that the Blue Binder that Dr. Mustoe gave testimony to the Court in his affidavit that he reviewed, given to the defendant in repsonse to interrogaories in 1990, states word for word: "The surgery was thoroughly radical. At no time during the preliminary consultation was

there a request for such a surgery"..."It was a complete shock" (R. Ex. 5), and further "The surgeon should not have taken the liberty to do anything not requested" (R. Ex. 5, 9). And this is supported by before and after surgery photos and yet Dr. Mustoe testified that the defendant did not violate the standard of care in doing this to me and both the Circuit and Appellate Courts just accepted it against my word and argument that they were granting the defendant and his expert a control and ownership over me that neither had any rights to under the US or Illinois State Constitution, or under any state law. Appendix 29 shows before surgery photos from the defendant's file taken by the defendant as part of a portfolio of various facial angles, front, side, etc.(R. Ex. 10) Appendix 30 shows after surgery photos of the scarring and lifetime impairment that I must endure with every movement that Dr. Mustoe says to the Court was not a violation of the standard of care (R. Ex. 5, 29) when I have testified that I do not know why this was done to my beautiful eyes, and that I gave no permission to the defendant to take a blade to the crease area of my eyes and snip them out the the way he did, and I did not know that he had any such intentions. My testimony that there was no such request and that there was not one word of conversation about this was disregarded by the Court.

The Court said that there is no evidence and it rejected my arguments that it is unheard of that photographs, reciepts, medical reports and records, written procedures and advertisements printed and disseminated to the public, documents hand signed by the defendant, and others put out by other doctors and by the American Society of Plastic Surgeons, bearing their personal identification & logo, are not admissible in a Court of Law, and further, that the evidence was on my person. It was on my person as I stood before the Circuit Court.

The Appellate Court dismissed the case with Lowney v. Arciom (1992), 2332 Ill. App. 715, 597, NE 2d 817, and Zalazar v. Vercimak (1994:, 261 Ill. App. 3d 250, 254, 633 NE

2d 1223. These cases concern themselves with the fact that a patient would have refused the proposed treatment if the risks and complications had been known and that this was the cause of injury which do not relate in any way to this plaintiff's complaint. My testimony is that the Defendant performed procedures that he had no permission from me to perform and that he took thousands of dollars of my money and never performed the procedures for which consent was given and the consideration paid. This case primarily concerns the issue of control and ownership and who has the first and last word under the US. Constitution to say what will and will not be done to a person while unconscious under anesthetic, and secondly, the taking of money and not performing the service paid for. The Court cites Walski v. Tiesenga (1878), 72 Ill. 2d 249, 256, 381 N.E. 2d 279, 282 which says that expert testimony is generally required to support a charge of medical malpractice and disregarded my arguments that Cosmetic surgery is a multi-billion dollar business and physicians advertise and sell a service -- the product of their hand -- their surgical skill-- to the public as a commodity. And that it should be judged by the advertisements, written handouts and procedures, they disseminate just like any other business and that they should be responsible for any damage they do just like any other business -- if the damage or impairment wasn't there before the surgery and it is there afterwards-- then they should be reponsible for it like any other busines that sells a service or a product. They should be repsonsible for full disclosure and full liability.(R.132-3, 155-6) The Ill. Med Practices Act, 225 Compiled Statute 60/1-3 May 22, 1987, in force at the date of surgery, the USCS and USCA Codes demand truth in advertising, full disclosure, admonishes product and/or service misrepresentations, vagueness and ambiguity of any kind that directly or indirectly harms the public. The Court further disregarded my argument that the cosmetic surgery industry is a multibillion dollar business that does not deal with health care of the sick, diseased and dying and that standard of care and unfortunate healing results such as relates to treating the sick and dying should not

apply. It rejected my arguments in my case that I meet all three requirements of Res Ipsa Loquitur and that there was nothing in this case that the public sector could not understand. The fact that I did not give my permission for a procedure, and the fact that what occurred never would have occurred if the surgeon had not treaspassed upon my person without my knowledge and consent while I was under unconscious under anesthetic, and the fact that the defendant has no rights to ownership over me is something that does not require the technical knowledge of an expert. It is something every comon man, even with the lowest of intelligence, can understand. (App. 27 & App. 29)

The Court Order says the Blue Binders 1/2 and 2/2 are not present in the Appellate Court so they cannot be considered on Appeal. However, the Court did give consideration, to and ruled in favor of the defendant, based upon the defendant's expert's review of these same documents the Court says it cannot consider on Appeal, and based upon his opinoin that in his review of these same documents, photos etc., that the defendant did not violate the standard of care. The Court is employing a double standard here.

There was only one original set of photos and documents mounted on hard cardboard backing and bound and enclosed in plastic for protection from loss or damage. And it wasn't until the case was in the Appellate Court that a new color zerox machine was available with the sensitivity and intensity to reproduce true to form photos. Many of the photos came from the defendant's file and were already copies of copies. When it was done, the color xerox copies of Blue Binders 1/2 and 2/2 (Also called Exhibits A & B) were officially made a part or the Circuit Court record as 2nd Supplemental Record--Exhibits via a Motion made to the Appellate Court and they were accepted by Court Order. (App.12) They were brought in by the Petition for Rehearing deadline date but the Court denied rehearing, therefore they were never reviewed. (App. 13)

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the judment and treatment of the issues presented herein by the Circuit Court of Cook County Illinois and by the Illinois Appellate Court, 1st District, are in conflict with very basic and fundamental rights and freedoms guaranteed to every citizen from birth under the U.S. Constitution.

If any right or freedom of choice not specifically mentioned word for word in the Bill of Rights deserves a more preferred postition in the law, it must certainly be the protection of rights and freedoms of a citizen while defenseless and unconscious under anesthetic. If the United States Constitution ceases to protect a citizen in this very vulnerable state, the fundamental powers and meaning of the protections of a free people in a free society under our Constitution are not only undermined and shattered, but the very essence of its protective powers becomes a sham and are ultimately nullified.

The United States Supeme Court has been forceful in its protection of a woman's right to decide whether to have children or not in the termination of a pregnancy in Roe v. Wade, 410 U.S. 113, 152-154; a parents right to have children instructed in a foreign language in Meyer v. Nebraska, 262 U.S. 390, the freedom of a person to marry someone of another race in Loving v. Virginia, 388 U.S. 1, 12; the right of a person to distribute contraceptives in Eisenstadt v. Baird, 405 U.S. 438; the freedom of a person to use contraceptives in Griswold v. Connecticut, 381 U.S. 479; and the right of parent's to send children to private schools; in Pierce v. Society of Sisters, 268, U.S. 510. 534-535.

In Faretta, 422 U.S. at 834 (quoting Illinois v. Allen, 397 U. S. At 350-1 [Brennan, J. Concurring]), the Court in examining a plaintiff's choice to refuse medication held, "his choice must be honored out of that respect for the individual

which is the lifeblood of the law." Cruzan v. Director, Missouri Dep't of Health, 110 S. Ct. 2841, 2851 (1990), held that there must be a respect for individual autonomy and freedom of choice that underlies a competent person's right to refuse unwanted medical treatment.The Court held that "no right is held more sacred, or is it more carefully guarded... than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." Id. At 2846 (quoting Union Pacific Ry. v. Botsford, 141 U.S. 250, 252 (1891))

In Moore v. City of Cleveland, Ohio, 431, U.S. 404, the Court protected a grandmother's right to live with her grandson, and in Bandy v. United States, No. 171 Misc., October Term, 1960, the Supreme Court protected the right of a pro se litigant to his freedom pending a judicial review. More recently, the Supreme Court accepted a case for writ of certiorari in Tina B. Bennis, v. State of Michigan ex rel, Wayne County Prosecutor, October Term, 1994, in a matter where a female's rights were infringed upon by the taking of her automobile because her husband broke the law in the use of the vehicle, which is not yet decided, but that has been determined to be of sufficient importance to warrant an examination by the U.S. Supreme Court. Battery upon a citizen while unconscious under anesthetic and the usurption of a citizen's right to freedom of choice and ownership over self, and the fact that a State's Code of Civil Prodedure and Supreme Court Rules hinder the justice of it, should be, at a minimum, at least equal to in importance to the members of the U.S. Supreme Court, if not infinitely more important, than concern for a usurped auto by a state authortity under circumstances to delicate to speak of.

In these cases, all of which are concerned with the normal everyday acts of living of citizens, the rights of those citizens, and the freedoms and protections of those persons while in a **conscious state of mind**, the United States Supreme

Court has given its full consideration and protection in the examination of the various freedoms at issue as implicit under the Constitution of a free people in a free society. For the United States Supreme Court now to withhold the exercise of its authority in the protection of the fundamental freedoms of a citizen by dening its protection in circumstances which evolved because of a tresspass upon a citizen's person, where a surgical procedure was forced upon them while **defenseless and unconscious under anesthetic**, thereby stripping them of the very fundamental right to know that the procedure was going to be perfomed and to exercise ones freedom of choice under the Constitution to consent or not consent to that procedure, strikes at the very essence of the meaning of liberty of a free people in a free society under Amendments IX, XIII, and XIV. (App 28) It is further a denial of equal protection of the laws of a person within its jurisdiction in every sense for the Court to protect citizens in situations of a conscious state of mind and to abandon a citizen and deny them protection in situations arising from events occurring while defenseless in an unconscious state of mind under Amendment XIV. (App. 28) It also violates U.S. Constitution Amendment XIII which prohibits slavery (App. 28) -- a slave, as defined in every Webster Dictionary, is one divested of all freedom and personal rights. A human who is wholly subject to the will of another -- one who has lost the power of resistance. Enslave, as defined by Webster, is to deprive of liberty and subject to the will of a master. All of these definitions apply in both substance and form to a situation where a surgeon has complete control of a person while unconscious under anesthetic, when he usurps ownership of a person, and forces his will and his choices upon a defenseless patient without his or her knowledge and consent when they are totally incapable of resisting.

18 USCS s113 n4 states, "From the language of 18 USCS s113, it is manifest that Congress employed word "assault to include battery s113 viewed in its entirety, covers entire range of assaults." US v Eades (1980), CA 4 MD, 615

F2d 617... and at s113 n7, it states: ..."violations of 18 USCS 113 (d) does not require intent to do bodily harm" US v Martin (1976), CA 2 NY, 536 F2d 535, It is not the intent of the surgeon that is at issue in this case, but rather that a consciuos act of assault and battery was inflicted by the surgeon by the very nature of an act of tresspass.

I pray the Court will examine this issue under Amendments IX, XIII, and XIV and under the USCS code. It should never happen in the United States of America that this kind of control is given to any surgeon or to anyone in any respect under the United States Constitution. And though the protection from non consented to surgery while unconscious isn't stated word for word in the Constitution, the purpose of Amendment IX itself is to "guaranty to individuals those rights inherent to citizenship in a demonacy which are not specifically enumerated in the Bill of Rights," U.S. v Cook (2070, WD Pa.) 311 F Supp 618. Rights under this amendment are those so "basic and fundamental and so deeply rooted in our society as to be truly essential rights and which nevertheless cannot find direct support elsewhere in the Constitution." U.S. v. Choate (1078, CA9 Cal) 576 F2d 165)

The Congress has recognized the abuse of the medical profession against the public in 42 USCS s11101 "Finding . The Congress finds the following:

> (1) "The increasing occurance of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual state. .... (5) "There is an overriding national need to provide incentive and protection for physcians engaging in effective professional peer review. (Nov. 14, 1986, P.L. 99-660, Title IV, s 402, 100 Stat. 3784)

The Court here recognizes the abuses of the medical

profession and the fact that peers do not want to be held responsible for having to stand as accuser against a fellow physician. The Court rejected my arguments that in non-informed consent, they should not have to, the act speaks for itself, and the justice and punishment of it should be automatic. It is something no American should ever have to fear when being put out under anesthesia. And in a case where there is no life threatening crisis or trauma making it impossible to obtain consent, as I have strongly argued, there is no excuse for it.

Further stated in 42 USCS 11115.....

> .....(d) " Treatment of patients malpractice claims. Nothing in this title (22 USCS s 11101 et seq) shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of Federal or State law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practioner, or health entity, or as limiting any defenses or immunites available to any physician, health care practioner, or hearth care entity. (Nov. 14, 1986, P.L. 99-660, Title IV, Part A, s 415, 100 Stat. 3787.)

As to the taking of $9,000 for a specified purchased service which was never performed, and substituting another procedure in written form in its place, signed by the respondent in his own handwriting, without disclosure to the petitioner that it was not the procedure requested and paid for is a violation under the U.S. Constitution freedom of press and is also a taking of the money under false pretenses. While Amendment I permits the freedom to publish and distribute material to the public, it is a violation of the First Amendment freedom of press to publish and distribute material which is misleading and untrue. Amendment I, n 202 addresses false and misleading advertising stating:

> "Truthful advertising of lawful activity is entitled to protection of First Amendment; where particular content or method of advertising suggests that is it inherently misleading, or when experience shows that it is subject to abuse, state may impose appropriate restrictions;"... Re R.M.J.(1982) 455 US 191, 71 L Ed 2nd 64, 102 S ct. 929, 7 Media LR 2545. (App. 28)

> "No one has constitutional right to disseminate false advertisements by United States mail or by any means in commerce for purpose of inducing or which is likely to induce, directly or indirectly, purchase in commerce of product advertised." (American Medical Products, Inc. v. Federal Trade Comm. (1943, CA9) 136 Fd 426.

The cosmetic surgery industry is a miltibillion dollar business. It is advertised and written procedures and documents are used to sell surgical procedures and the product of the surgeons hand -- his skill-- as a commodity (R.132-3). 26 USCS s9701 defines a person in business: " a person shall be considered to be in business if such person collects or derives revenue from any business activity."The procedures of the cosmetic surgeon are advertised in newspapers, magazines, and brochures -- are sent through the mail, handed out in the physcian's office, -- and these procedures are sold by the cosmetic surgeon and purchased by the public for situation specific reasons.

I pray that the Court will examine the issue of elective cosmetic surgery under the First Amendment as a business that should be responsible under all of the obligations to the public in the same manner as any other business which sells a product or service (R. 132-3, 155-6), and the unconstitutionality of Codes 2-622 and 220 under Amendment XIV that denied this petitioner the right to sue in a serious matter where $9,000 was paid to the respondent when the service for which it was paid was never performed.

CONCLUSION

For the reasons set forth above, a writ of certiorari should be issued to review the constitutionality of the judgment of the Court of Appeals under the United States Constitution and USCS codes:

1. in a matter of compelling importance concerning the denial of fundamental rights and protections of a citizen during surgery while totally defenseless and unconscious under anesthetic;

2. that it examine the industry of cosmetic elective procedures as a business, where services are sold -- where a product of the hand is sold -- to the public at exhorbitant amounts of money , that should provide the same disclosure and be responsible for what they sell in the same way as any other business must be responsible for the service or product that they sell as separate and distinct from healing art medical treatment where standard of care and unfortunate healing results should not apply in the same way as they do in situations where surgeons treat patients under circumstances of serious disease, accident or other traumatic life threatening situations; and,

3. that it examine the treatment and attitude of the State of Illinois judicial system in its lack of protection of vital Constitutional rights, by denying equal protection of the laws, denying a litigant the right to sue in matters where constitutional rights are transgressed upon, denying the protection of the freedom of choice and ownership over self, the right to due process, freedom of speech in the courts, the right to redress, and the right to truthful disclosure in a surgical situation. The judicial systems enforcement of Rules 220 and 2-622 are unconstitutional.

The issues I describe have never before been examined and decided upon by the United States Supreme Court and

there is a nationwide need, of which this Court must be aware, for the medical profession to be examined under the U.S. Constitution because the abuses within the profession toward the public have been epidemic for generations. The Circuit Court and the Appellate Court have both been silent on the constitutional issues I have raised.These codes have deprived me of fundamental rights that have been mine since birth.

There are no current protections under the Attorney General's Office Consumer Fraud Division, Better Business Bureau, or any other independent agency which protects the public from the abuses of the medical profession. The American Society of Plastic & Reconstructive Surgeons does not discipline a dues paying member of the brotherhood unless a Court Judgment has been brought against him and they are compelled to act accordingly. This is a conflict of interest.

Cosmetic surgeons do not have to answer to any authority for anything that they say or do, and because of Code 2-622 - Physicians Affidavit and Code 220 - Expert Witness, they enjoy a total judicial immunity by simply maintaining a code of silence and by not standing up as witness against their own kind.

Codes 2-622 and 220, violate the VIX Amendment, which states" No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of ...liberty...nor deny to any person within its jurisdiciton the equal protection of the laws.

I beg the U.S. Supreme Court's indulgence for any imperfections or errors on my part in any circumstance in this case. The Court was never intended to be a testing ground for the legal skills of the public, but rather a constitutionally protected place of justice for the citizenry to obtain recompence for violations of the law and Constitution against them. There

is assistance in Cook County, Illinois for pro se defendants, but there is no assistance for pro se plaintiffs and yet my tax money has supported the judiciary system my entire working lifetime in the same way as any pro se defendant. I have given my most honest and true and best effort to comply with the United States Supreme Court's rulings in this written presentation and I pray that it will be accepted and heard.

Respectfully submitted,

Rosemary Stramel

Rosemary Stramel, pro se

Rosemary Stramel
%1131 Darrow Ave.
Evanston, Illinois 60202
847-869-1966

APPENDIX A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Stramel)
)
v.) No. 89L 13946
)
Stone)

ORDER

This matter coming on for hearing on defendant's Motion to Dismiss under Section 2-619 due notice having been given and the court being advised, It is hereby ordered:

Defendant's motion is denied without prejudice to refiling if the Supreme Court reverses the decision in DeLuna.

Willard J. Lassers
Jan 30, 1990
Circuit Court , 19
Enter:
/s/ Lassers
Judge Judge's No.
90L12 1171

Atty No. 18324
Name Stamos
Attorney for Defendant
Address 111 Washington #1440
City Chgo, Il 60602
Telephone 312-407-7979

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Stramei)
)
v.) No. 89L 13946
)
Stone)

ORDER

This matter coming on for hearing on pretrial, the parties having appeared, It is hereby ordered that this case is returned to the trial call.

Plaintiff's new address for service of all notices is:

1131 Darrow Avenue
Evanston, Illinois 60202
708-869-1966

Judge James J. Heyda
Jan 11, 1993
Circuit Court - 157
1--11--93
Enter:
/s/ J.J. Heyda 157
Judge Judge's No.

Atty No. 18324
Name Stamos
Attorney for Defendant
Address 111 Washington #1815
City Chgo, Il 60602
312-407-7979

R. C000052

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX C

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Stramel)
)
v.) No. 89L 13946
)
Stone)

ORDER

This matter coming on for hearing on the trial call, all parties being present in person or by counsel,

It is hereby ordered that this case is set for trial on April 13, 1994.

Plaintiff shall name her expert witness, if any, on or before, November 4, 1993 pursuant to Rule 220.

Defendant shall depose any such expert on or before December 6, 1993.

Defendant shall threafter identify experts pursuant to Rule 220 on or before January 5, 1994.

Plaintiff shall depose defendant's expert on or before February 4, 1994.

Judge Arthur Sullivan
Oct - 5 - 1993
Circuit Court - #405
_____ 19____
Enter:
s/s A.J. Sullivan
Judge Judge's No.

Atty No. 18324
Name Stamos
Attorney for Defendant
Address 111 W. Washington #1815
City Chgo, Il 60602
312-630-7979

R. C000084

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX D

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Stramel	)	
	)	
v.	)	No. 89L 13946
	)	
Stone	)	

ORDER

This matter coming on for hearing on defendant's motion to bar expert and for summary judgment, due notice having been given and the Court being advised,

It is hereby ordered that defendant's motion to bar is granted. Plaintiff is hereby barred from employing expert testimony at trial. It is therefore further ordered that defendant's motion for summary judgment is granted and judgment is entered in favor of the defendant and against the plaintiff.

Judge Jacqueline P. Cox
Feb 18, 1994
Circuit Court - #1519

Atty No. 18324
Name Jame Stamos
Attorney for Defendant
Address 111 W. Washington #1815
City Chgo, Il 60602

_____ 19____

Enter:
/s/ J. Cox
Judge Judge's No.

R. C000149

AURELIA PUCINSKI CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX E

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Rosemary Stramel	)	
	)	
v.	)	No. 89L 13946
	)	
Nelson Stone, M.D.	)	

ORDER

This cause coming to be heard for ruling on plaintiff's motion for summary judgment, due notice having been given and the court being advised,

It is hereby ordered that 1. plaintiff's motion for summary judgment is entered and continued to 5-17-94 at 11:30 for status

2. Trial date of 4-13-94 is stricken

3. Plaintiff is given leave to file a motion to vacate the court order of 2-18-94 within 21 days, on or before 4-11-94, defendant to respond by 4-27-94; plaintiff to reply by 5-11-94.

4. Ruling on motion to vacate on 5-17-94 at 11:30 in Room 401

5. Briefs to be filed in room 401; motion to vacate to be heard by Judge Cox.

Atty No. 18324
Name Stamos
Attorney for Defendant
Address 111 W. Washington
City Chgo, Il 60602
630-7979

Judge Jacqueline P. Cox
Mar 18 1994 19
Enter: /s/ J. P. Cox 1519

Judge Judge's No.

R. C000150

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX F

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

4217

Stramel)
)
v.) No. 89L 13946
)
Stone)

ORDER

A DECISION WILL BE FINAL TUESDAY

MAY 24, 1994 AT 11:30 A.M. 401D

Atty No.
Name
Attorney for
Address
City

Hon. Jacqueline P. Cox May 17, 1994
_____ 19_____
Enter: _____
/s/ J. Cox
Judge Judge's No.

R. C000206

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX G

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Rosemary Stramel	)	
	)	
v.	)	No. 89L 13946
	)	
Nelson Stone, M.D.	)	

ORDER

This cause coming to be heard for ruling on Plaintiff's Motion for Summary Judgment and Defendant's Motion to Bar Expert Testimony and for Summary Judgment, the Court having considered the materials submitted by the parties, having considered the arguments of Plaintiff and defense counsel and being fully advised in the premises:

It is hereby ordered that Plaintiff's Motion to Accept Documents and List of Documents is granted;

It is further ordred that Plaintiff's Motion for Summary Judgment is denied and Defendant's Motion to Bar Expert Testimony and for Summary Judgment is granted and judgment is hereby entered in favor of Defendant and against Plaintiff on Plaintiff's complaint.

Atty No. 18324
Name M. Trucco
Stamos & Trucco
Attorney for Defendant
Address 111 W. Washington
City Chgo, Il 60602
312- 630-7979

Hon. Jacqueline P. Cox May 24,1994
_____ 19_____

Enter: /s/ Jacqueline P. Cox 1519
_____
Judge Judge's No.

R C000206

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX H

FOURTH DIVISION
June 30, 1995

Notice

The text of this order may be Changed or corrected prior to the time for filing of Petition for Rehearing or the disposition of the same.

No. 1-94-2060

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROSEMARY STRAMEL	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	No. 89L 13946
NELSON STONE, M.D.,	)	Honorable
Defendant-Appellee.	)	Jacqueline Cox,
		Presiding.

ORDER

Plaintiff Rosemary Stramel filed a pro se complaint against defendant Dr. Nelson Stone for negligence in the performance of cosmetic surgery. When plaintiff failed to name an expert within the time designated by the Court, defendant filed a motion to bar expert testimony at trial and for summary judgment. Plaintiff produced no evidentiary material in

response to the motion, and the trial Court granted defendant's motion. On appeal, plaintiff claims that informed consent does not require expert testimony.

In September 1987, defendant performed plastic surgery upon plaintiff's face. Exactly two years later, plaintiff filed her pro se complaint alleging defendant failed to obtain her informed consent and negligently treated her. She did not originally file a physcian's report with her complaint pursuant to section 2-622 of the Code of Civil Procedure. 735 ILCS 5/2-622 (West 1992).

In response to defendant's motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619West 1992)), plaintiff produced a letter from Robert Dryden, M.D. This letter stated, in part,

> "It is customary in the medical profession to give adequate informed consent as to what the surgeon plans, what results are anticipated, and what the complications might be. It such an informed consent has not occurred, it would be negligent."

When the case appeared on the trial call, the court ordered plaintiff to name an expert by November 4, 1993 and set the trial for April 13, 1994. Plaintiff indicated at this hearing that she did not intend to employ an expert and did not indentify an expert by the designated time.

In January 1994, defendant filed a motion to bar expert testimony at trial and for summary judgment. The motion was supported by the affidavit of Dr. Thomas Mustoe, who was a aboard certified plastic surgeon, a professor of surgery and the chief of the division of plastic surgery at Northweastern Memorial Hospital. Dr. Mustoe indicated that the defendant did not deviate from the standard of care with respect to the care and treatment of plaintiff.

One month later, the trial court granted defendant's motion for summary judgment and barred plaintiff from employing an expert at trial. After some procedural confusion, the trial court allowed plaintiff's motion to vacate, and heard both parties' motions for summary judment together. At this time, the trial court granted plaintiff's motion to accept certain documents and a list of documents. The record suggests that these documents include a "Blue Binder 1 of 2 - Photo/Other Documents," a "Blue Binder 2 of 2 - Schedule of Losses," and a list of "Illinois Superior Court Cases:" however, these documents are not a part of the appellate record so they cannot be considered on review. After considering all of the evidentiary material, the trial court denied plaintiff's motion for summary judgment and again granted defendant's motion to bar expert testimony and his motion for summary judgment.

On appeal, plaintiff seeks reversal of the summary judgment because she does not believe that she needs an expert to support an informed consent claim.

The general standard of proximate causation in medical malpracatice suits involving "informed consent" requires objective evidence that the patient would have refused the proposed procedure had she been informed of the risks and complications involved. (Lowney v. Arcion (1992), 232 Ill. App. 3d 715, 597 N.E. 2d 817.) The standard is satisfied upon upon expert evidence that a reasonable medical medical practitioner, in similar circumstances, would have told the patient of such risks/complications, and the failure to do so was the proximate cause of the patient's injury. Zalazar v. Vercimak (1994), 261 Ill. App. 3d 250, 254, 633 N.E. 2d 1223.

In this case, plaintiff produced no expert testimony or evidentiary material in response to defendant's motion. Additionally, there are no evidentiary facts in the record to support plaintiff's position. Generally, expert testimony is required to support a charge of medical malpractice. (Walski v.

Tiesenga (1978), 72 Ill. 2d 249, 256, 381 N.E. 2d 279, 282.) Defendant produced an uncontradicted affidavit from a qualified medical expert stating that defendant did not deviate from the standard of care and treatment rendered to plaintiff. Therefore, we see no reason to disturb the trial court's determination.

Plaintiff also alleges that she should be able ro proceed under the theory of res ipsa loquitur; however, she did not plead this theory of recovery in her complaint, nor did she provide an opinion of negligence in the physcian's report as required by statute. (735 ILCS 5/2-622 (c) West 1992.) The only report filed by plaintiff merely mentions the informed consent doctrine as described above. Nothing in the record supports plaintiff's claim under res ipsa loquitur.

Accordingly, the judgment of the circuit court is affirmed. Affirmed.

S.M. O'BRIEN, J. with HOFFMAN, P.J. and CAHILL, J. Concurring.

APPENDIX I

No. 1-94-2060

In The Appellate Court, State of Illinois
First District

ROSEMARY STRAMEL Plaintiff-Appellant,	)	
	)	No. 1 - 94 - 2060
v.	)	
NELSON STONE, M.D., Defendant-Appellee.	)	

ORDER

The request in this matter coming up to be heard the Plaintiff-Appellant's Motion to permit her Exhibits A & B, which were presented to the Circuit Court by Motion on 5/20/95 and accepted by Circuit Order on 5/24/95, to be bound as a Supplemental Record by the Clerk of the Circuit Court and sent to the Apellate Court by a July 21, 1995 rehearing deadline date is hereby granted.

IT IS HEREBY ORDERED that Plaintiff-Appellant's Petition for Rehearing be DENIED.

/s/ (?) Hoffman
Justice

Justice

Justice

Jul. 20 95

Rosemary Stramel, Pro Se
% Rick Arbizzani
1131 Darrow Avenue
Evanston, Illinois 60202
(708) 869-1966

GILBERT S. MARCHMAN, CLERK OF THE APPELLATE COURT, FIRST DISTRICT

APPENDIX J

No. 1-94-2060

IN THEAPPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROSEMARY STRAMEL Plaintiff-Appellant,	)	Appeal from the Circuit Court of Cook County.
v.	)	No. 89L 13946
NELSON STONE, M.D., Defendant-Appellee.	)	Honorable Jacqueline Cox, Presiding.

ORDER

This cause coming on to be heard on the Petition for Rehearing of Plaintiff-Appellant, ROSEMARY STRAMEL, the Court being fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiff-Appellant's Petition for Rehearing be DENIED.

DATED: July 27, 1995

/s/ ? O'Brien
JUSTICE
/s/ ? Hoffman
JUSTICE
/s/ ? Cahill
JUSTICE

APPENDIX K

79676

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217-782-2035)

December 6, 1995

Ms. Rosemary Stramel
c/o Rick Arbizzani
1131 Darrow Avenue
Evanston, Il. 60202

No. 79676 - Rosemary Stramel, petitioner, v. Nelson Stone, M.D., respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

McMorrow, J., took no part.

The mandate of this Court will issue to the Appellate Court on December 28, 1995.

APPENDIX L

Firm 18324

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ROSEMARY STRAMEL,	)	
Plaintiff,	)	No. 89L 13946
	)	
v.	)	FILED 11
	)	1994 JAN 25 PM 12:22
NELSON STONE, M.D.	)	Circuit Court of Cook
Defendant.	)	County Illinois
		Law Division

DEFENDANT'S MOTION TO BAR EXPERT TESTIMONY AND FOR SUMMARY JUDGMENT

NOW COMES defendant, Nelson Stone, M.D., by his attorney, James J. Stamos of STAMOS & TRUCCO, and pursuant to Illinois Code of Civil Procedure, 2-1005 moves this Honorable Court for the entry of an order of summary judgment in his favor and against the plaintiff. In support of this motion, defendant states as follows:

1. Plaintiff has filed a single count complaint against this defendant alleging various acts of medical negligence against. This defendant has fileld an answer denying all of the operative allegations of plaintiff's complaint.

2. In order to prevail in this medical malpractice lawsuit, plaintiff must offer testimony of an expert witness to establish that this defendant failed to meet the standard of care required of him with respect to the performance of those operative procedures. Rohe v. Shivde, 203 Ill. App. 3d 181, 460 N.E. 2d 1113 (1st Dist. 1990)

3. Pursuant to Court's Order, Plaintiff was required to

name her expert by November 4, 1993. She failed to comply with the Order and Defendant will move to bar any expert at trial as a result. Plaintiff will therefore offer no expert testimony at trial.

4. Attached to this motion as Exhibit A is the affidavit of Thomas A. Mustoe, M.D., a board certified plastic surgeon. That affidavit contains Dr. Mustoe's expert opinion based upon a reasonable degree of medical certainty, that all of the care required of him and that he in no way deviated from the standard of care with respect to the care he provided.

5. Plaintiff can supply no counter affidavit to controvert Dr. Mustoe's affidavit. Absent a counter affidavit setting forth expert testimony that this defendant deviated from standard of care, summary judgment must be entered in favor of Dr. Stone and against the Plaintiff. 735 ILCS 5/2-1005.

WHEREFORE, defendant, Nelson T. Stone, M.D., prays that this Honorabale Court enter summary judgment in his favor and against the plaintiff.

Respectfully submitted,

/s/ James Stamos
James J. Stamos, Attorney for
Defendant, NELSON STONE, M.D.

James J. Stamos
STAMOS & TRUCCO
111 West Washington Street
Suite 1815
Chicago, Illinois 60602
(312) 630-7979
Firm 18324

APPENDIX M

ILLINOIS SUPREME COURT RULES

Article II, Part E. Discovery, Requests for Admission and Pretrial Procedure

RULE 220. Expert Witnesses

(a) Definitions.

(1) Definition of Expert Witness. An expert is a person who, because of education, training or experience, possesses knowledge of a specialized nature beyond that of the average person on a factual matter material to a claim or defense in pending litigation and who may be expected to render an opinion within his expertise at trial. He may be an employee of a party, a party or an independent contracgtor.

(2) Consulting Expert. A consulting expert is a person who possesses the same qualifications as an expert witness and who has been retained or specially employed in anticipation of litigation or preparation for trial but who is not to be called at trial to render opinions within his area of expertise.

(b) Disclosure.

(1) Expert Witness. Where the testimony of experts is reasonably contemplated, the parties will act in good faith to seasonably:

(i) ascertain the identity of such witnesses, and

(ii) obtain from them the opinions upon which they may be requested to testify.

In order to insure fair and equitable preparation for trial by all parties the identity of an expert who is retained to render an opinion at trial on behalf of a party must be disclosed by that party either within 90 days after the substance of the expert's opinion first becomes known to that party or his counsel or if the substance of the expert's opinion is then known, at the first pretrial conference in the case, whichever is later. In any event, as to all expert witnesses not previously disclosed, the trial court, on its own motion, or on the motion of any party after

the first pretrial conference, shall enter an order scheduling the dates upon which all expert witnesses, including rebuttal experts, shall be disclosed. The schedule established by the triall court will sequence the disclosure of expert witnessees in accordance with the complexities of the issues involved and the burdens of proof of the respective parties as to those issues. All dates set by the trial court shall be chosen to insure that discovery regarding such expert witnesses will be completed not later than 60 days before the date on which the trial court reasonably anticipates the trial will commence. Upon disclosure, the expert's opinion may be the subject of discovery as provided in paragraph (c) hereof. Failureto make the disclosure required by this rule or to comply with the discovery contemplated herein will result in disqualification of the expert as a witness.

(2) Consulting expert. Except as provided in paragraph (c)(5) hereof, a party need not disclose the identity of a consulting expert.

(c) Discovery.

(1) Upon interrogatory propounded for that purpose, the party retaining or employing an expert witness shall be required to state:

(i) the subject matter on which the expert is expected to testify;

(ii) his conclusions and opinions and the bases therefore; and (iii) his qualifications.

(2) The party answering such interrogatories may respond by submitting the signed report of the expert containing the required information.

(3) A party shall be required to seasonably supplement his answers to interrogatories propounded under this rule as additional information becomes known to the party or his counsel.

(4) The provisions of paragraphs (c) and (d) hereof also apply to a party or an employee of a party who will render an opinion within his expertise at the time of trial. However, the provisions of paragraphs (c) and (d) do not apply to parties or

employees of entities whose professional acts or omissions are the subject of the litigation. The opinions of these latter persons may be the subject of disclosure by deposition only.

(5) The identy, opinions and work product of consulting experts are discoverable only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means. However, documents, objects and tangible things as defined in Rule 214 which are in the possession of a consulting expert and which do not contain his opinions may be obtained by a request for that purpose served upon the party retaining him.

(6) Unless manifest injustice would result, each party shall bear the expense of all fees charged by his expert witness or witnesses.

(d) Scope of testimony. To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings through interrogatories, deposition or requests to procduce, his direct testimony at trial may not be inconsistent with nor go beyond the fair scope of the facts known or opinions disclosed in such discovery proceedings. However, he shall not be prevented from testifying as to facts or opinions on matters regarding which inquiry was not made in the discovery proceedings.

(Adopted June 29, 1984; effective Oct. 1, 1984)

APPENDIX N

ILLINOIS CODE OF CIVIL PROCEDURE
Ill. Rev. Stat. Ch 110. Pars I et Seq.

Part 6. PLEADING

s 2-619. Involuntary dismissal based upon certain defects or defenses. (a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:

(1) That the court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer of the case to a court having jurisdiction.

(2) That the plaintiff does not have legal capacity to sue or that the defendant does not have legal capacity to be sued.

(3) That there is another action pending between the same parties for the same cause.

(4) That the cause of action is barred by a prior judgment.

(5) That the action was not commenced within the time limit by law.

(6) That the claim set forth in the plaintiff's pleading has been released, satisfied of record, or discharged in backruptcy.

(7) That the claim asserted is unenforceable under the provisions of the Statute of Frauds.

(8) That the claim asserted against the defendant is unenforceable because of his or her minority or other disability.

(9) That the claim asserted against the defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.

(b) A similar motion may be made by any other party against whom a claim is asserted.

(c) If, upon the hearing of the motion, the opposite party presents affidavits or other proof denying the facts alleged, or

establishing facts obviating the grounds of defect, the court may hear and determine the same and may grant or deny the motion. If a material and genuine disputed question of fact is raised the court may decide the motion upon the affidavits and evidence offered by the parties, or may deny the motion without prejudice to the right to raise the subject matter of the motion by answer and shall so deny it if the action is one in which party is entitled to atrial by jury and a jury demand has been filed by the opposite party in apt time.

(d) The raising of any of the foregoing matters by motion under this Section does not preclude the raising of them subsequently by answer unless the court has disposed of them by motion on its merits; and a failure to raise any of them by nmotion does not preclude raising them by answer.

(e) Pleading over after denial by the court of a motion under this Section is not a waiver of any error in the decision denying the motion.

(f) The form and contents of and procedure relating to offedavits under this Section shall be a provided by rule.

(Amended, effective Sept. 23, 1983.)

APPENDIX O

ILLINOIS CODE OF CIVIL PROCEDURE
Ill. Rev. Stat. Ch 110. Pars I et Seq.

Part 6. PLEADING

s. 2-622. Healing art malpractice. (a) In any action, whether tort, contract or otherwise, in which the plaintiff seeks damages for injuries or death by reason of medical, hospital, or other healing art malpractice, the plaintiff;s attorney or the plaintiff, if the plaintiff is proceeding pro se, shall file an affidavit attached to the original and all copies of the complaint, declaring one of the following:

1. That the affiant has consulted and reviewed the facts of the case with a health professional who the affiant reasonably believes: (i) is knowledgeable in the relevant issues involved in the particular action; (ii) pracatices orhas practiced within the last 6 years or teaches or has taught within the last 6 years in the same area of health care or medicine that is at issue in the particular action; and (iii) is qualified by experience or demonstrated competence in the subject of the case; that the reviewing health professional has determined in a written report, after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for filing of such action. If the afficavit is filed as to a defendant who is a physician licensed to treat human aiments without the use of drugs or medicines and without operative surgery, a dentist, a podiatrist, or a psychologist, the written report must be from a healath professional licensed in the same profession, with the same class of license, as the defendant. For affidavits filed as to all other defendants, the written report must be from a physician licensed to practice medicine in all its branches. In either event, the affidavit must identify the profession of the reviewing health

professional. A copy of the written report, clearly identifying the plaintiff and the reasons for the reviewing health professional's determination that a reasonable and meritorious cause for the filing of the action exists, must be attached to the affidavit, but the information which would identify the reviewing health professional may be deleted from the copy so attached.

2. That the affiant was unable to obtain a consultation required by paragraph 1 because a statute of limitations would impair the action andthe consultation required could not be obtained before the expiration of the statute of limitations. If an affidavit is executed pursuant to this paragraph, the certificate and written report required by paragraph 1 shall be filed within 90 days after the filing of the complaint. The defendant shall be excused from answering or otherwise pleading until 30 days after being served with a certificate required by paragraph 1.

3. That a request has been made by the plaintiff or his attorney for examination and copying of records pursuant to Part 20 of Article VIII of this Code and party required to comply under those Sections has failed to produce such records within 60 days of the receipt of the request. If an affidavit is executed pursuant to this paragraph, the certificate and written report required by paragraph 1 shall be filed within 90 days following receipt of the requested records. All defendants except those whose failure to comply with Part 20 of Article VIII of this Code is the basis for an affidavit under this paragraph shall be excused from answering or otherwise pleading until 30 days after being served with the certificate required by paragraph 1.

(b) Where a certificate and written report are required pursuant to t his Section a separate certivicate and written report shall be filed as to each defendant who has been named in the complaint and shall be filed as to each defendant named at a later time.

(c) Where the plaintiff intends to rely on the doctrine of

"res ipsa loquitur", as defined by Section 2-3113 of this Code, the certificate and written report must state that, in the opinion of the reviewing health professional, negligence has occurred in the course of medical treatment. The affiant shall certify upon filing of the complaint that he is relying on the doctrine of "res ipsa loquitur".

(d) When the attorney intends to rely on the doctrine of failure to inform of the consequences of the procedure, the attorney shall certify upon the filing of the complaint that the reviewing health professional has, after reviewing the medical record and other relevant materials involved in the particular action, concluded that a reasonable health professional would have informed the patient of the consequences of the procedure.

(e) Allegations and denials in the affidavit, made without reasonable cause and found to be ukntrue, shall subject the party pleading them or his attorney, or both, to the payment of reasonable expenses, actually incurred by the other party by reason of the untrue pleading, together with reasonable attorneys' fees to be summarily taxed by the court upon motion made within 30 days of the judgment or dismissal. In no event shall the award for attorneys' fees and expenses exceed those actually paid by the moving party, including the insurer, if any. In proceedings under this paragraph (e), the moving party shall have the right to depose and examine any and all reviewing health professionls who kprepared reports used in conjunction with an affidavit required by this Section.

(f) A reviewing health professional who in good faith prepares a report used in conjunction with an affidavit required by this Section shall have civil immunity from liability which otherwise might result from the preparation of such report.

(g) The failure to file a acertificate required by this Section shall be grounds for dismissal under Section 2-619.

(h) This Section does not apply to or affect any aactions pending at the time of its effective date, but applies to cases filed on or after its effective date.

(Amended, effective Sept. 1, 1989)

APPENDIX P

ILLINOIS CODE OF CIVIL PROCEDURE
Ill. Rev. Stat. Ch 110. Pars I et Seq.

Part 7. ACTION FOR DECLARATORY JUDGMENT

s 2-1005. Summary judgments. (a) For plaintiff. Any time after the opposite party has appeared or after the time within which he or she is required to appear has expired, a plaintiff may move with or without supporting affidavits for a summary judgment in his or her favor for all or any part of the relief sought.

(b) For defendant. A defendant may, at any time, move with or without supporting affidavits, for a summary judgment in his or her favor as to all or any part of the relief sought against him or her.

(c) Procedure. The opposite party may prior to or at the time of the hearing on the motion file counter affidavits. The judgment sought shall be rendered without delay if the plealdings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although thre is a genuine issue as to the amount of damages.

(d) Summary determination of major issues. If the court determines that there is no genuine issue of material fact as toone or more of the major issues in the case, but that substantial controversy exists with respecxt to other major issues, or if a party moves for a summary determination of of one or more, but less than all, of the major issues in the case, and the court finds that there is no genuine issue of material fact as to that issue or those issues, the court shall thereupon draw an order specifying the major issue or issues that appear without substantial controversy, and directing such further proceedings upon the remaining undetermined issues as are just. Upon the

trial of the case, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits. The form and contents of and procedure relating to affidavits under this Section shall be as provided by rule.

(f) Affidavits made in bad faith. It it appears to the satisfactin of the Court at anytime that any afficavit presented pursuant to this Section is presented in bad faith or solely for the purpose of delay, the court shall without delay order the party employing it to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused him or her to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms.

(Amended, effective Sept. 14, 1985.)

APPENDIX Q

ILLINOIS CODE OF CIVIL PROCEDURE
Ill. Rev. Stat. Ch 110. Pars I et Seq.

Part 11. TRIAL

s 2-1113. Medical Malpractice - res ipsa loquitur. In all cases of alleged medical or dental malpractice, where the plaintiff relies upon the doctrine of res ipsa loquitur, the court shall determine whether that doctrine applies. In making that determination, the court shall rely upon either the common knowledge of laymen, if it determines that to be adequate, or upon expert medical testimony, that the medical result complained of would not have ordinarily occurred in the absence of negligence on the part of the defendant. Proof of an unusual, unexpected or untoward medical result which ordinarlily does not occur in the absence of negligence will suffice in the application of the doctrine.

(Amended effective July 13, 1982.)

APPENDIX R

U. S. CONSTITUTION - AMENDMENT ONE

Freedom of religion, of speech, of the press, and right of petition - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for a redress fo grievances.

U. S. CONSTITUTION - AMENDMENT NINE

Reserved rights of people - The enumeration in the Constitution, of certain rights, shall not be construed to deny or desparage others retained by the people.

U. S. CONSTITUTION - AMENDMENT THIRTEEN

Slavery prohibited - Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

U. S. CONSTITUTION - AMENDMENT FOURTEEN

Citizenship defined; privileges of citizens - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiciton the equal protection of the laws.

APPENDIX S

Illinois Constitution

Art. I, Sec. 1- Inherent & Inalienable Rights
Art. I, Sec. 2 - Due Process & Equal Protection
Art. I, Sec .12 - Right to Remedy and Justice
Art. I, Sec. 24 - Rights Retained
Article 6, Sec. 4c, Appeals from Appellate Court Matter of Right When Question Arises Under the Constitution of US

Doctrines

Doctrine of Res Ipsa Loquitur

a. The event must be of a kind which ordinarily would not occur in the absence of negligence.
b. The event must be caused by an occurrance in the exclusive control of the defendant.
c. The event was not due to any neglect or voluntary act on the part of the plaintiff.

Doctrine of Informed Consent

Surgeon to give explanation of proposed treatment, the alternataives to the treatment, and the foreseeable risks and resutls. Failure to complywith these three prerequisites is negligence.

Illinois Cases & Revised Statute

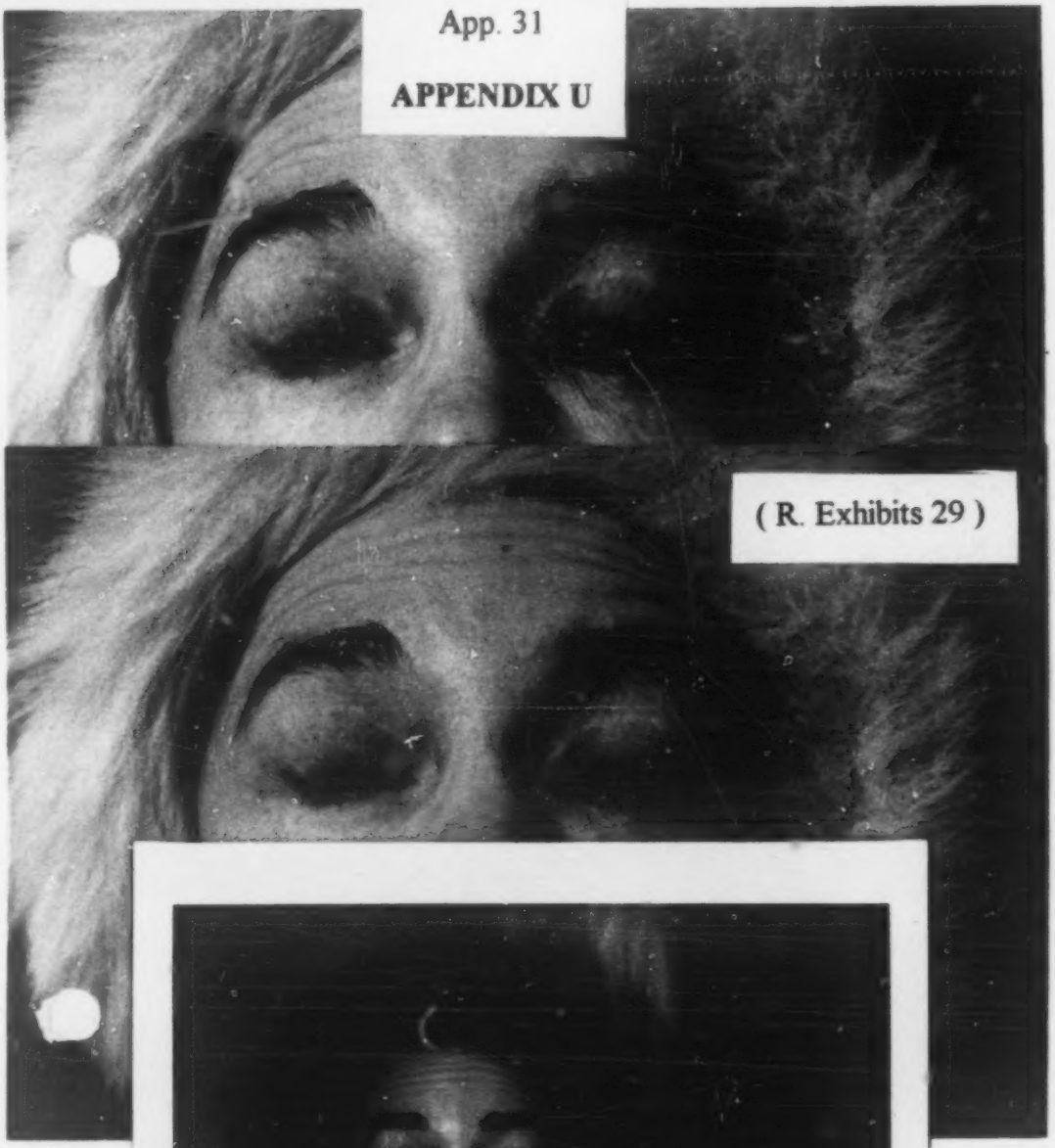
Green v.Hussey,127 Ill. App 2d 174, 262 NE 2d 156 (1Dist'70)
Pratt v. Davis, 224 Ill. 300, 79 NE 562 (1906)
Church v. Adler, 350 Ill. App. 471, 113 NE 2d 327 (3d Dist'53)
Gaskin v. Goldwasser, 166 Ill. App. 3d 996, (4th Dist 1988)
Mink v. University of Chicago, 460 F Supp 713 (N Ill 1978)
Guebard v. Jabaay, 117 Ill App. 3d 1(2d Dist '83)
Tabor v Riordan (1980) 83 Ill App 3d 900, 904
Magna v. Elie (1982), 108 Ill. App. 3d 1028
Casey v. Penn, 45 Ill. App. 3d 1068, 362 NE 2d 1373
Vogelsang v. Credit Life Ins. 119 Ill. App. 2d 67 (1970)
Ill. Revised Stat. C. 111, Par 4400-29 (Eff. 5/22/87)

APPENDIX T



(R. Exhibits 10)

APPENDIX U



(R. Exhibits 29)



(R. Exhibits 5)